IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR.

J U D G M E N T

Vivekanand Mills vs. Orient Gum Industries Pvt.Ltd.

S.B.Civil First Appeal No.144/1990 under Section 96 read with Order 41 rule 1 and 2 C.P.C. against the judgment and decree dated 8.3.1990 passed by Shri Kailash Chand Jain RHJS, Additional District Judge No.5, Jaipur City, Jaipur in Civil Suit No.3/83(7/83).

Date of Judgment :::::: July 27, 2006

PRESENT

HON'BLE MR.JUSTICE KHEM CHAND SHARMA

Mr.J.P.Goyal for appellant.
None appeared for respondent.

BY THE COURT (ORAL):-

The facts leading to this appeal in brief are that the plaintiff-respondent filed a suit before the learned trial court against the defendant appellant for recovery of Rs.10,700/-. It was averred in the plaint that on

15.2.1982, the defendant appellant purchased Guar gum of Rs.93,000/- vide credit memo No.5/82 from the respondent through agent Jagdish Chand & Company on the condition that in case the amount was not paid within seven days, it would carry an interest @ 18% per annum which was agreed by the defendant. The plaintiff further averred that the defendant paid only Rs.83,700/- but inspite of demand did not pay the balance cost of the goods and interest accrued thereon. The case of the plaintiff was that on 15.6.1982 a registered notice was sent to the defendant through counsel which was received by the defendant, who vide his letter dated 13.7.1982 assured to pay the balance amount but nothing was paid. Hence, the plaintiff filed a suit for recovery of Rs.10,700/- i.e. Rs.9,300/- as the principal sum and Rs.1400/- as the interest accrued thereon up to the date of filing of the suit.

2. The defendant appellant in his written statement has contended that the court at Jaipur has got no jurisdiction to entertain and try the suit and the deal was finalised at Bombay and the goods were sold at Bombay. Purchase order was also given at Bombay and the payment was also to be made at Bombay. It was mentioned that the delivery of the goods was agreed to be made free of cost at the mill of the defendant situated at Bombay. Therefore, as per the case of

the defendant, court at Jaipur has no jurisdiction to entertain and try the suit. It was also mentioned that the goods were sent through the Bank and the defendant got the goods released from the Bank on 6.3.1982 and paid Rs.84,306/- towards the cost of the goods and Rs.504.48 were also paid on account of bank commission, telephone charges, registration charges and interest the Central Bank of India, Bombay on the same day. It was the case of the defendant that the delivery of the goods was to be made through their commission agent Jagdish Chand & Company at the mills of the defendant at Bombay and the freight and transportation charges and other incidental charges were to be born out by the plaintiff. As the defendant has paid Rs.3620/- towards the freight and transportation charges, therefore, only a sum of Rs.4944/- was due towards it which was offered by the defendant but the plaintiff refused to accept the same. It was also explained by the defendant that through its letter dated 13.9.1982 the defendant assured to make payment but the same was for the amount of Rs.4944/-. Lastly, it was pleaded that as the plaintiff has refused to accept the amount offered by the defendant, the plaintiff is not entitled to receive any interest.

On the basis of the pleadings of the parties, the learned trial court framed 5 issues.

In support of its case, the plaintiff examined Shri Ram Vallabh Jakhotia as PW.1 and exhibited as many as 8 documents. In defence, the defendant examined Shri Gunwant Rai and also exhibited three documents.

Learned trial court after recording evidence of the parties and hearing both the sides decided issue No.2 holding that Rs.6300/- were due towards the defendant and thus, vide impugned judgment and decree dated 8.3.1990 decreed the suit of the plaintiff-respondent for Rs.6930/- (Rs.6300/- as principal sum and Rs.630/- interest till filing of the suit). The plaintiff was also held entitled to charge interest on the principal sum @ 6% per annum from the date of filing of the suit till realisation.

Being aggrieved of the impugned judgment and decree of the learned trial court, the defendant appellant has preferred the present first appeal.

Learned counsel for the appellant has contended that the learned trial court has failed to consider this aspect of the case that the goods were agreed to be purchased through Jagdish Chand & Co., a commission agent of the

plaintiff respondent and the terms and conditions of the deal were not settled by the plaintiff and the defendant directly. As the plaintiff has failed to produce the commission agent, the terms and condition of the transaction cannot be taken to be proved and the learned trial court ought to have drawn adverse inference against the plaintiff under Section 114(g) of the Evidence Act. On this strength, learned counsel for the appellant contended that the finding of learned trial court on issue No.1 is, therefore, perverse. Counsel further contended that the goods were to be delivered at the factory of the defendant and the freight and other incidental charges were to be born by the plaintiff. Therefore, the defendant was entitled for an adjustment of Rs.3620/- incurred by him in freight and transportation charges. As per learned counsel, the learned trial court has failed to consider this aspect of the case and thus, committed error in recording finding on issue No.2 holding that Rs.6300/- were due against the defendant. Lastly, counsel contended that as the complete transaction for sale of the goods had taken place at Bombay, the proposal was made and accepted at Bombay and the delivery of the goods were also to be made at the mills of the defendant at Bombay and the payment was also to be made at Bombay. Therefore, the finding of learned trial court on issue No.3 regarding the Jaipur court having

jurisdiction to entertain and try the suit is perverse and bad in law.

After hearing learned counsel for the appellant, I have gone through the impugned judgment as well as the material and evidence available on record.

Issue No.1 is related regarding the rate of interest to be paid to the plaintiff. It is an undisputed fact that the terms and conditions regarding supply of the goods were not settled in between the plaintiff and the respondent directly but the supply order was placed through the commission agent Jagdish Chand & Company. It is also an undisputed fact that the plaintiff has failed to produce and examine the commission agent. However, as the amount remained with the defendant and he utilised the same, he is liable to pay interest on the due amount. As it was a commercial transaction, I am of the view that the interest @12% per annum was rightly awarded by the learned trial court. In this view of the matter, I am of the opinion, that the finding arrived at by learned trial court on issue No.1 requires no interference.

Issue No.2 is related as to what amount was due against the defendant ? It was the case of the plaintiff

in the plaint as well as in his statement that Rs.9300/- were due against defendant but in the letter dated 19th March,1982 (A/3) sent immediately after delivery of goods, the plaintiff has mentioned that Rs.6300/- were due against the defendant. As against this, the defendant has come with this case that as the goods were to be delivered at the mill of the defendant, he is entitled to adjustment of Rs.3620/- which he had paid towards transportation charges and therefore, only Rs.4944/- remain due against him for which he was ready to pay but the plaintiff refused to accept the same. As has been discussed above, as the commission agent was not produced, the terms and conditions of the contract were not proved. Therefore, the defendant is not entitled for adjustment of the amount alleged to have been spent by him against transportation charges. The plaintiff has not disputed the letter dated 19th March, 1982 (A/3) showing Rs.6300/- due against the defendant, it has to be taken an admitted fact that Rs.6300/- were due against the defendant. In this view of the matter, I find that the learned trial court has committed no error in deciding the issue No.2 holding that Rs.6300/- were due against the defendant.

Issue No.3 is related to the dispute at to which court has jurisdiction to entertain and to try the suit. Whether

it is court at Bombay or the court at Jaipur. There is only oral evidence regarding the terms and conditions of the supply and there is no written agreement. Therefore, the circumstances have to be taken into consideration. The bill Ex.2 was issued at Jaipur and in Ex.9 the defendant has mentioned that they shall be sending a draft by the third week of May. Meaning thereby that the payment was to be made at Jaipur. In this view of the matter, I am of the opinion that the court at Jaipur had jurisdiction to entertain and try the suit. Therefore, the learned trial court has committed no error in deciding issue No.3 in favour of the plaintiff and against the defendant.

For the discussions above, the first appeal fails and is hereby dismissed with no orders as to cost.

(K.C.Sharma),J.

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